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No. 87-1934

In the Supreme Court of the United States

OCTOBER TERM, 1988

GLASSBORO SERVICE ASSOCIATION, INC., PETITIONER

v.

ANN DORE MCLAUGHLIN, SECRETARY OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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ANN DORE MCLAUGHLIN, SECRETARY OF LABOR

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Petitioner contends that it should not have been held in contempt for violating a district court order by requiring migrant farmworkers to pay the costs of traveling from Puerto Rico to their places of work in New Jersey. When those transportation costs are subtracted from the workers' earnings, they receive less than the federal minimum wage set forth in the Fair Labor Standards Act of 1938, 29 U.S.C. (& Supp. IV) 201 *et seq.* (FLSA).

1. Petitioner is an association of New Jersey farmers that recruits Puerto Rican migrant farmworkers for its members (Pet. App. 1a). Petitioner recruits the laborers under an agreement with the Commonwealth of Puerto Rico (*id.* at 1a-2a). Petitioner arranges for the workers' transportation from the point of recruitment in Puerto Rico to the point of hire in New Jersey (*id.* at 41a, 48a), but petitioner requires the workers to pay the costs of transportation (*ibid.*). When those costs are deducted from the compensation paid to the workers, the result is

often a rate of compensation below the minimum wage required under the FLSA (29 U.S.C. 206; Pet. App. 48a).

In 1978, the Secretary of Labor brought an action against petitioner for violating the minimum wage provisions of the FLSA (29 U.S.C. 206, 215(a)(2); Pet. App. 1a). The Secretary asserted that petitioner's practice of deducting transportation costs from the workers' wages[1] constituted a violation of the Act to the extent that it reduced their pay below the statutory minimum (Pet. App. 3a). The district court agreed with the Secretary (*id.* at 7a-9a) that transportation costs which are incident to petitioner's recruitment program cannot be charged to employees if such costs result in net pay less than the minimum wage. See 29 U.S.C. 203(m); 29 C.F.R. 531.32(c). Accordingly, on December 5, 1979, the district court permanently enjoined petitioner from deducting its transportation costs from the workers' wages if such a deduction results in net pay below the minimum wage.[2] The court of appeals affirmed that injunction (639 F.2d 774 (1980)), and this Court denied a petition for a writ of certiorari (450 U.S. 1040 (1981)).

In August 1981, the Secretary filed in the district court a petition seeking to hold petitioner in civil contempt of the court's 1979 injunction (Pet. App. 43a). The Secretary had learned that petitioner was advancing transportation costs to workers and then requesting "voluntary paybacks" of those advances (*ibid.*). On November 5, 1981, with the

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[1] At that time, it was petitioner's practice to refund the deducted transportation costs and further pay the cost of a trip back to Puerto Rico for those employees who complete their term of hire (Pet. App. 2a).

[2] A copy of the December 1979 order is included as Appendix A to this memorandum. That order was not a final judgment because it did not resolve the issue of money damages.

consent of the parties, the court entered a new injunction (1981 Injunction) that incorporated the original injunction and added provisions specifically prohibiting petitioner from seeking "voluntary paybacks" of transportation costs (*id.* at 16a-21a, 43a-44a).

The district court entered a money judgment in this case on August 25, 1983. The court ordered petitioner to pay more than $294,000 in back wages. Pet. App. 36a-38a. In an opinion supporting that judgment, the court rejected petitioner's claim that it could require employees to pay bus fare before they were assigned to a particular farm (*id.* at 25a-29a). Petitioner argued that this practice did not violate the 1981 Injunction because a worker's payment of transportation costs before he began work was not a "deduction" from wages. The court ruled that "to the extent that a worker's payment of his ground transportation reduced the amount of money he ultimately earned below the minimum wage, that payment violated the [1981 Injunction]" (*id.* at 29a). Petitioner did not appeal from the money judgment.

2. On February 11, 1987, the Secretary commenced this contempt action. The Secretary alleged that petitioner had continued to require farm laborers to pay their transportation costs in defiance of the 1981 Injunction (Pet. App. 47a). Petitioner admitted that it required workers to pay airfare from Puerto Rico and to pay the cost of ground transportation from the airport to their housing (*id.* at 47a-48a). But petitioner denied that this practice of requiring workers to pay their own airfare violated the 1981 Injunction, even though workers' net wages often dropped below the statutory minimum (*id.* at 48a).

The court found petitioner to be in civil contempt. The court squarely rejected, as it had in August 1983, petitioner's assertion that the 1981 Injunction only prohibited "deductions" from wages to pay transportation costs and

did not forbid the workers' outright payment of those expenses (*id.* at 61a). The court observed that petitioner's argument "substitutes artificial distinctions for a practical view of the economic realities" (*ibid.*). The court reiterated its finding of 1979 that petitioner must bear transportation expenses as part of its recruitment costs because those expenses primarily benefit petitioner, not the farmworkers (*id.* at 60a).

On July 23, 1987, the court entered an order holding petitioner in civil contempt and requiring petitioner to remedy its violation (Pet. App. 70a-73a). The court of appeals affirmed that order without an opinion on February 8, 1988.[3]

3. The court of appeals' decision is clearly correct and does not conflict with any decision of this Court or any other court of appeals. Thus, no further review is warranted.

Petitioner argues (Pet. 21-24) that the district court's 1981 Injunction is wrong because it forbids petitioner's practice of charging farmworkers with its transportation costs if such charges reduce the workers' wages below the statutory minimum. Thus, petitioner is challenging the contempt order solely on the ground that the underlying injunction is based on a legal error. Accordingly, petitioner's current challenge is foreclosed by " 'the long-standing rule that a contempt proceeding does not open to reconsideration the legal or factual basis of the order alleged to have been disobeyed.' " *United States* v. *Rylander*, 460 U.S. 752, 756 (1983) (quoting *Maggio* v. *Zeitz*, 333 U.S. 56, 69 (1948)).

As petitioner concedes (Pet. 22), the correctness of the underlying order was fully litigated. And petitioner is in

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[3] Petitioner omitted the court of appeals' order from its appendix. A copy of that order is included as Appendix B to this memorandum.

no position to argue that the district court in the present contempt action has given the 1981 Injunction a new construction of which it had no prior notice. The 1981 Injunction provides that petitioner "shall not include [in] the computations of its employees' minimum wages, as the cost of furnishing facilities to its employees, the cost of transporting workers from the point of recruitment to the point of hire" (Pet. App. 18a-19a). The district court stated in its August 25, 1983 Letter Opinion that "[r]egardless of when the worker pays for his fare, the court thinks that the * * * consent order places the burden of that cost upon the employer. The decree forbids the employer from including transportation costs from the point of recruitment—here Puerto Rico—to the point of hire—the farm—as a part of the employer's minimum wage payment to the worker" (*id.* at 28a-29a). Thus, it has been clear since 1983 that petitioner's practice of requiring workers to pay their transportation costs violates the court's 1981 Injunction, and an order of contempt for a clear violation of that injunction was wholly proper.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

GEORGE R. SALEM
Solicitor of Labor

JULY 1988

APPENDIX A

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

No. 78-0377

MARSHALL, ETC.

v.

GLASSBORO SERVICE ASSOCIATION, INC.

December 5, 1979, motion for reconsideration denied February 13, 1980

Full Text of Order

GERRY, District Judge.—Plaintiff having moved for summary judgment on July 6, 1979, and defendant having opposed this motion, and a hearing having been held on this motion before the Court on October 19, 1979, partial summary judgment is hereby granted to plaintiff on the issue of liability, and it is therefore:

ORDERED, ADJUDGED AND DECREED that defendant, its member farmers, its agents, servants, employees and those persons in active concert or participation with it be and they hereby are permanently enjoined and restrained from violating the provisions of sections 6 and 15(a)(2) of the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, 29 U.S.C. § 219), hereinafter called the Act, in any of the following manners:

(1) Defendant shall not contrary to section 6 of the Act fail to pay its employees who are engaged in commerce

or in the production of goods for commerce, or who are employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act as aforesaid, at rates less than the minimum wage prescribed therein.

(2) Defendant shall not deduct the cost of transporting workers from the point of recruitment to the point of hire from the minimum wages due its employees under the Act. Defendant shall not include in the computations of its employees' minimum wages, as the cost of furnishing facilities to its employees, the cost of transporting workers from the point of recruitment to the point of hire.

(3) Defendant shall not offset the value of the benefits provided by it pursuant to its contract with its employees in the form of housing, utilities and meals against the minimum wage required to be paid to its employees if such offset would result in the employee receiving in cash less than the minimum wage prescribed by the Act; and it is further

ORDERED, ADJUDGED AND DECREED that a hearing shall be scheduled on the issue of the extent of damages and the entitlement of specific employees thereto.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 87-5654

ANN DORE MCLAUGHLIN, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR

vs.

GLASSBORO SERVICE ASSOCIATION, INC., APPELLANT

Appeal from the United States District Court
for the District of New Jersey – Camden
(D.C. Civil No. 78-0377)
District Judge: Honorable John F. Gerry

Argued Feb. 2, 1988

[Filed Feb. 8, 1988]

JUDGMENT ORDER

Before: SLOVITER, STAPLETON, and MANSMANN, *Circuit Judges.*

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

BY THE COURT,

/s/ CAROL LOS MANSMANN
Carol Los Mansmann
Circuit Judge

Attest:

/s/ SALLY MRVOS
Sally Mrvos, Clerk

February 8, 1988

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